



P. 72(b). Among other options, the district court may accept, reject, or modify, in whole or in part, the challenged portions of the proposed findings and recommendations. Id.

In this case the court also must consider new evidence submitted by the parties. Plaintiffs submitted the Amended Declaration of Errol Young, which raises a fact issue on clear floor space in the bathrooms. Defendant submitted recent affidavits of Robert Warren, Defendant's expert, and Lon Townsend, a lay witness, which raise a fact issue on the vandalism exception to the requirement of shower spray units. In light of this new evidence the court concludes that summary judgment should be denied as to both issues.

With the above modifications, it is **ORDERED** that the Memorandum and Recommendation, and Order is hereby **ADOPTED** by this court.

The court concludes that this case is appropriate for mediation. If the parties are not able to settle the case in the next thirty (30) days, they shall provide the court with the name, address, telephone number, facsimile number, and e-mail address of an agreed upon mediator and a date for the mediation.

This case is scheduled for Docket Call on June 13, 2014, at 4:00 p.m. in Courtroom 9-B, Ninth Floor, United States Courthouse, 515 Rusk Avenue, Houston, Texas 77002. The Joint Pretrial Order and motions in limine are due on June 6, 2014. Plaintiffs are responsible for timely filing the complete joint pretrial order.

No instrument filed within seven days of docket call shall be considered. All pending motions may be ruled on at docket call, and the case will be set for trial if the joint pretrial order has been filed.

The Clerk shall send copies of this Order to the respective parties.

**SIGNED** at Houston, Texas, this the 7th day of March, 2014.

  

---

SIM LAKE  
UNITED STATES DISTRICT JUDGE